IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2687 OF 2004

Mahendra Manilal Shah Petitioner
versus
Krishna Tukaram Shete & ors. Respondents

Mr.P.S.Dani for petitioner.
Mr.Kulkarni i/by Shri L.M.Acharaya for R-1.
Smt.M.M.Deshmukh, APP for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 19th October 2006
PC :

1. The application preferred by the petitioner during the course of trial of a complaint u/s 138 of Negotiable Instruments Act, 1881, was rejected by learned Judicial Magistrate, First Class, Pune and even the revision application challenging that order has been dismissed.

2. In my view, perusal of the order would indicate that the petitioner-accused is aggrieved by the fact that the cross examination of the deponent/complainant although complete as on 12th December 2003, a copy of the said deposition was made available after a period of one and a half months and the same was not signed by the learned Judge immediately.

3. For such a contention to be taken note of, it would be necessary to go into all materials including perusing the record of the complaint. Once the trial has proceeded and is now set down for arguments, it would not be appropriate to entertain grievance of the petitioner. However, it would be open for the petitioner to raise this grievance in case he is aggrieved by the final order in the complaint. In such proceedings, which would be directed against the final order, it would be open for the petitioner to raise all contentions including highlighting the point of interpolation in the cross examination. All such contentions of both sides are expressly kept open.

4. As far as issue, as to whether the successor Magistrate can proceed with the case which was at the stage of evidence before his predecessor is concerned, that issue is now concluded by the judgement of this Court dated 11th August 2006 in Criminal Revision Application No.252 of 2005. For the reasons assigned therein the petitioner’s submission that a de-novo trial should be held, is rejected. Petition dismissed.

(S.C.DHARMADHIKARI, J.)